



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation	6 VAC 20-210 et seq.
Regulation title	Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries
Action title	Arrestee DNA Regulations
Document preparation date	7/22/2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This regulation provides guidance to agencies responsible for collecting DNA samples from persons arrested for any violent felony and for certain burglaries as specified in Virginia Code §§ 19.2-310.2:1 and 19.2-310.3:1. The regulation describes when a sample is required, who is responsible for collecting the sample, how the sample is to be collected and labeled, and how to transport the sample to the Division of Forensic Science for analysis. Without this regulation, the law will not be implemented properly and many samples required from arrested persons will not be collected and entered into the DNA Data Bank, leaving open the likelihood that many of these arrestees will be released from custody without being linked to unsolved crimes that they committed.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 9.1-102 of the Code of Virginia authorizes the Criminal Justice Services Board to adopt regulations “for any provisions of the Code as they relate to the responsibilities of the Division of Forensic Science.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulation is to comply with Code of Virginia §§ 19.2-310.2:1 and 19.2-310.3:1, effective January 1, 2003, which require DNA sampling of persons arrested for all violent felonies and certain burglaries.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

This is a new regulation established to implement Code of Virginia §§ 19.2-310.2:1 and 19.2-310.3:1 effective January 1, 2003. An emergency regulation is currently in place while this regulation is reviewed in accordance with the provisions of the Administrative Process Act.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

Public safety will be greatly enhanced through use of this regulation. The primary advantage to the public is the opportunity for earlier identification of persons who have committed previously unsolved crimes. DNA Data Bank “hits” will occur between evidence collected at crime scenes and the DNA profiles of persons sampled upon arrest. This swift identification will often prevent the release from custody of arrestees who have been linked to these unsolved crimes. Additionally, innocent persons will be exonerated when true perpetrators are identified through DNA evidence.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	No additional cost associated with the proposed regulation.
Projected cost of the regulation on localities	No additional cost associated with regulation.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Persons arrested for violent felonies and certain burglaries; law enforcement agencies and/or jails responsible for booking upon arrest (and, therefore, collecting samples); Division of Forensic Science.
Agency’s best estimate of the number of such entities that will be affected	Approximately 400 (estimated number of agencies that are responsible for booking upon arrest).
Projected cost of the regulation for affected individuals, businesses, or other entities	No additional cost associated with regulation.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Department of Criminal Justice Services, Division of Forensic Science, is the authorized agency that conducts DNA analysis in Virginia. There are no alternatives available to meet the essential purpose of this regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
No public comment received in response to NOIRA.		

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The taking of biological samples upon arrest for DNA analysis does not have a family impact.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

This is a new regulation.